IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee, v. PAMELA FRANCESCA CONWAY, Appellant.	)	2 CA-CR 2006-0232 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20054200

Honorable Barbara Sattler, Judge Pro Tempore

AFFIRMED

Terry Goddard, Arizona Attorney General
By Randall M. Howe and Cari McConeghy-Harris
Phoenix
Attorneys for Appellee

Isabel G. Garcia, Pima County Legal Defender
By Robb P. Holmes
Tucson
Attorneys for Appellant

P E L A N D E R, Chief Judge.

¶1 A jury found Pamela Conway guilty of possession of a narcotic drug and possession of drug paraphernalia. The trial court suspended the imposition of sentence and

placed Conway on probation for eighteen months. We find no merit to the single issue she raises on appeal and affirm her convictions.

¶2 Conway contends the sanctions the trial court imposed for the state's disclosure violations were inadequate, arguing the court should instead have precluded the criminalist's testimony and report confirming the substance seized by the police officer was cocaine. In a supplemental disclosure statement filed January 4, 2006, the state asserted it would call a criminalist whose name would be disclosed at a later date. Shortly after that, the parties engaged in plea negotiations. After Conway rejected the state's plea offer on January 27, the court set the case for trial on April 18.

¶3 On April 7, the state filed a disclosure statement finally naming its criminalist as Quentin Peterson. On April 17, defense counsel filed a motion seeking to preclude Peterson and a police officer from testifying and to preclude admission of Peterson's report. Counsel reported the state had initially told her there was no property sheet for the evidence seized in the case, but after two electronic mail requests, she finally received a property sheet while at the county attorney's office on another matter. Counsel also reported that the prosecutor had ignored multiple electronic mail requests to schedule interviews, finally responding to one listing specific dates she was available with a statement that he would be out of town but that interviews would be scheduled. They were not. Defense counsel attached copies of electronic mail requests and letters to other prosecutors in the office asking for assistance with her discovery requests but reported she had received no help.

¶4 Defense counsel wrote she had finally interviewed two police officers on April 5, learned for the first time that the arresting officer's daily activity log might prove helpful to her case, and requested a copy of it. Counsel also said she had learned on April 10 that the state intended to call Quentin Peterson as its criminalist, but no interview of him had been scheduled and she had never received a copy of his report.

¶5 The trial court heard the motion in limine on the morning trial was set to begin. A lengthy discussion ensued, in which defense counsel told the court she had never received a copy of the criminalist's report or the arresting officer's daily activity log, and the prosecutor insisted he had disclosed the laboratory report and ignored the complaint about the officer's log. The trial court addressed each of the issues, providing defense counsel a copy of the criminalist's report and directing the arresting officer to find out about his activity log. When the officer reported the log had been routinely purged on March 26, six months after the arrest, the court ruled it would give the jury an instruction pursuant to *State v. Willits*, 96 Ariz. 184, 393 P.2d 274 (1964), which it did, and permit defense counsel "wide latitude on cross-examination."

¶6 After the court refused to preclude Peterson from testifying, counsel interviewed him during the noon recess, although she had been reluctant to do so because she had not received a copy of his notes. But counsel noted she had previously prosecuted narcotic cases and there was little of his testimony she could not anticipate. And, after interviewing him, she reported she was "satisfied with what he had to say."

¶7 In addition, the trial court offered the defense a continuance, an offer Conway refused. Finally, the court admonished the prosecutor about responding to defense counsel's complaints that she had not received disclosed materials, noting it was unacceptable to simply state the items had been disclosed through usual methods and not respond when counsel reported they had not been received. And the court rejected the prosecutor's assertion that defense counsel had failed to properly schedule interviews by not calling his secretary, pointing out that no rule requires defense counsel to telephone a secretary and that counsel's contact with the prosecutor should have been sufficient to have interviews scheduled. The court also rebuked the prosecutor for shirking the state's disclosure duty and blaming defense counsel for the disclosure failures.

¶8 A trial court has broad discretion in imposing sanctions for discovery violations. *State v. Rienhardt*, 190 Ariz. 579, 586, 951 P.2d 454, 461 (1997). We will not reverse a trial court's choice of sanctions absent demonstrated prejudice. *Id.* Nor will we find that a trial court abused its discretion "unless no reasonable judge would have reached the same result under the circumstances." *State v. Armstrong*, 208 Ariz. 345, ¶ 40, 93 P.3d 1061, 1070 (2004). Although we share the trial court's concern about the prosecutor's somewhat cavalier attitude toward defense counsel's reported failure to receive the state's disclosure materials, we are unable to conclude the court abused its discretion in choosing the appropriate sanctions for those failures.

¶9 Accepting Conway's justified refusal of its offer to continue the trial,[1] the court made certain defense counsel was given a copy of the criminalist's report and sufficient opportunity to interview him. The court directed the police officer to locate his activity log, and immediately upon learning the log had been purged, stated its intent to give the jury a *Willits* instruction and to allow defense counsel wide latitude in cross-examining the officer. Considering the nature of the discovery violations before it, we conclude the trial court's choice of sanctions was appropriate.

¶10 Accordingly, we affirm Conway's convictions and placement on probation.

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JOHN PELANDER, Chief Judge

CONCURRING:

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JOSEPH W. HOWARD, Presiding Judge

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GARYE L. VÁSQUEZ, Judge

[1]Conway summarily asserts that requiring her "to choose between a continuance and late disclosure violated her right to a speedy trial under Rule 8, Ariz. R. Crim. P., 16A A.R.S., and the due process and speedy trial clauses of the state and federal constitutions." Conway forfeited any such claims, however, by failing to present them below. *See State v. Henderson*, 210 Ariz. 561, ¶ 19, 115 P.3d 601, 607 (2005).